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Robert Ray Root

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
The Honorable Stanley A. Bastian

United States of America,

Plaintiff,

v.

Robert Ray Root,

Defendant.

No. 1:22-CR-2018-SAB-1

**Defendant's Sentencing  
Memorandum**

Robert Ray Root is 53 years old and suffers from physical pain, depression, anxiety, and schizophrenia. Mr. Root has never been to prison and his last contact with law enforcement was in 2005 for a driving with a no valid operator's license. Now, he faces a significant term of imprisonment for receiving and distributing child pornography.

Mr. Root recognizes his offenses are serious and that there is a five-year mandatory minimum sentence. The guidelines, however, provide for a longer term of

1 imprisonment. One of the primary reasons for the long sentence is based on Mr.  
2 Root's conduct that occurred approximately 30 years ago involving minors. While a  
3 sentence of imprisonment is appropriate, a sentence within the guideline range is  
4 greater the necessary to meet the goals of sentencing. Instead, a sentence of 84  
5 months, and 10 years of supervised release is sufficient but not greater than necessary  
6 to meet the goals of sentencing.  
7

### 8 **I. Base Offense Level and Enhancements.**

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10 Mr. Root previously submitted his objections the Presentence Investigation  
11 Report and Suggested Special Conditions. [ECF No. 68].

### 12 **II. Departures.**

13 Mr. Root is not seeking a downward departure.  
14

### 15 **III. Sentencing Under 18 U.S.C. § 3553(a)**

16 In determining an appropriate sentence, the Court must consider the  
17 sentencing factors of § 3553(a), as well as the nature and circumstances of the offense  
18 and the characteristics of the defendant in fashioning a sentence. The sentence  
19 imposed by the Court must be "sufficient, but not greater than necessary to  
20 accomplish the goals of sentencing." *Kimbrough v. United States*, 552 U.S. 85 (2007).  
21

#### 22 **1. Nature and Circumstances of the Offense.**

23 Mr. Root came to the attention of law enforcement during an investigation that  
24 occurred between October 10, 2021, and November 8, 2021. An agent connected to  
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1 a Peer-to-Pear file sharing program and saw an electronic device sharing files of  
2 known or suspected images of child pornography. The investigation revealed the  
3 computer sharing the files had an IP address that returned to an address in  
4 Toppenish, WA, which was determined to be Mr. Root's address. A description of  
5 the child pornography files shared between October 10, 2021, and November 8, 2021,  
6 is in the PSIR. [ECF No. 61 at ¶¶12-15].  
7

8 On January 5, 2022, a search warrant was executed at Mr. Root's residence  
9 resulting in the seizure of computer equipment. On January 13, 2022, a computer  
10 forensic analysis was conducted on one computer, resulting in the location of child  
11 pornography to include images and videos. Mr. Root admitted the possession of child  
12 pornography and the use of file sharing programs. Mr. Root also made other  
13 admissions about conduct with minors that occurred over thirty years ago that is not  
14 part of the relevant conduct. *Id.* at ¶¶17, 48-61.  
15

16 Considering the nature and circumstances of the offense, a term of  
17 imprisonment is warranted. However, the guideline range in the PSIR is greater than  
18 necessary to meet the goals of sentencing. A sentence of 84 months and 10 years of  
19 supervised release sufficient to meet the goals of sentencing.  
20

## 21 **2. History and Characteristics of Robert Ray Root.**

22 Mr. Root is 53 years old and has had a difficult life. His mother and father  
23 separated when he was just 3 years old. Mr. Root's grandmother raised him for  
24

1 several years, until he reunited with his mother. Mr. Root's mother began a  
2 relationship with William Root, and Mr. Root recalls his mother and stepfather  
3 drinking, arguing and family members engaged in physical fights, including the  
4 siblings. Mr. Root and his sister, Tracy Clark, both recall being placed in foster care,  
5 but could not recall the reason for being placed in foster care. Mr. Root could not  
6 recall if he was sexually abused as a child, but believed he was due to his experiences  
7 as a child. When he was a teenager, Mr. Root realized he was sexually abused while at  
8 parties when he was drinking and using drugs. *Id.* at ¶¶s93-97.

11 As a teenager and young adult Mr. Root used drugs and consumed alcohol. He  
12 was exposed to alcohol at a young age by his mother and drank alcohol for many  
13 years until the age of 21. He also stopped using drugs when he was 21. Mr. Root  
14 relapsed and used alcohol in 2004, which led to his last DUI conviction. To help him  
15 address his alcohol abuse issues, Mr. Root completed both inpatient and outpatient  
16 treatment, and attended alcoholic anonymous for 5 years. *Id.* at ¶¶s109-111.

18 When he was 19 years old, Mr. Root sought psychiatric treatment because he  
19 began experiencing visual hallucinations and behaviors like his mother who suffered  
20 from schizophrenia. Mr. Root was also diagnosed with paranoid schizophrenia and  
21 has experienced hallucinations throughout his life. At Yakima County Jail, Mr. Root  
22 saw a mental health counselor and received medication which seemed to help him.

23 When he was released from custody, Mr. Root saw Ken Schaffer, a psychologist at  
24

1 Ken Shafer & Associates, and he was diagnosed with schizophrenia, multiple  
2 episodes, currently in full remission; persistent depressive disorder, served, in partial  
3 remission; and generalized anxiety disorder. Mr. Root attended treatment sessions  
4 with Mr. Schaffer. *Id.* at ¶¶103-108.

6 In addition to experiencing depression, anxiety and schizophrenia, Mr. Root  
7 also suffers from sensory neuropathy, a progressive disorder causing nerve pain  
8 throughout his body. Mr. Root feels pain throughout his body with anything his body  
9 comes in contact with, such as clothing or shoes. While at the Yakima County Jail,  
10 Mr. Root needed special shoes to help him with his foot pain. Mr. Root consistently  
11 feels pain in left foot and lower back due to a bulging disc and was diagnosed with a  
12 degenerative and discogenic back disorders in a 2017 3-year medical review, along  
13 with finding of Schizophrenia Spectrum and Other Psychotic Disorders. *Id.* at ¶¶98-  
14 102. Because of his mental health and physical disabilities, Mr. Root cannot work and  
15 was determined disabled, and receives social security. Before he being unable to  
16 work, Mr. Root was employed. He worked at Legends Casino in various capacities,  
17 he worked at a steel mill, and other jobs. Mr. Root also obtained his GED and  
18 attended college at Heritage for two semesters. *Id.* at ¶¶112-117.

22 It is clear Mr. Root has endured many hardships throughout his life, and still  
23 does. He is in constant pain, and he suffers from mental disorders, which have left  
24 him unable to maintain employment. He was abandoned by his mother and father for  
25

1 a period of time. When he returned to live with his mother, Mr. Root witnessed  
2 domestic violence as a boy and spent time in foster care, along with his sister.  
3 According to one his brothers, their mother encouraged the siblings to fight for  
4 entertainment. *Id.* at ¶97. Even with so many obstacles he's faced, Mr. Root has  
5 addressed some of his health issues and substance abuse issues. Mr. Root sought  
6 medical attention for his pain, he sought mental health counseling for his mental  
7 disorders, and he completed inpatient and outpatient treatment. Mr. Root has family  
8 support and lives with his sister. His sister describes Mr. Root as a "good brother."  
9 *Id.* at ¶96. Mr. Root also maintains contact with his daughter. *Id.* at ¶95.

12 Mr. Root recognizes that what he did was wrong and that he will be  
13 imprisoned. The question is what sentence meets the goals of sentencing under  
14 3553(a)? The guideline range of imprisonment is significant. This range, though, is  
15 largely due to conduct that occurred almost 30 years ago that is not related to this  
16 offense of conviction. During his interview with agents, Mr. Root made admissions  
17 about inappropriate conduct with minors that occurred in the 90's. There is no  
18 indication that similar conduct has occurred since then. To be clear, in no way is Mr.  
19 Root, or defense counsel, minimizing the conduct that occurred many, many years  
20 ago, but to sentence Mr. Root based on what occurred almost 30 years ago is  
21 unnecessary to meet the goals of sentencing.

1 Here, considering the nature and circumstances of the offense and Mr. Root's  
2 history and characteristics, a sentence of 84 months and 10 years of supervised release  
3 is sufficient to meet the goals of sentencing. This sentence is significant for someone  
4 like Mr. Root who experiences pain daily and suffers from mental health issues. His  
5 time while incarcerated will be much more difficult than someone in good health.  
6

7 Further, a greater sentence than proposed by Mr. Root is unnecessary because  
8 Mr. Root has shown he can make positive changes in his life that protect the public,  
9 such as completing inpatient and outpatient treatment and attending alcoholic  
10 anonymous. Since 2004, Mr. Root has no consumed alcohol or drugs and no longer  
11 drives while intoxicated. More recently, Mr. Root sought mental health counseling  
12 upon his release from custody pending trial in this matter, and has done well while on  
13 pretrial release, except for a recent violation, which has been addressed. Mental health  
14 counseling, sex offender treatment and pain management will help Mr. Root and the  
15 community more than imprisoning him for a significant period.  
16

17 Mr. Root is remorseful for his actions and understand what he did was wrong.  
18 However, Mr. Root has shown he is amenable to rehabilitation. Based on his limited  
19 criminal history and willingness to participate treatment, a sentence of 84 months  
20 imprisonment and 10 years of supervised release will protect the public and deter Mr.  
21 Root from future criminal conduct.  
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1           **3. The guidelines do not support a sentence within the guideline range.**

2           In child pornography cases, sentencing courts can vary from the guidelines  
3 based on policy disagreements with them because they are not based on any empirical  
4 data. *See United States v. Henderson*, 649 F.3d 955, 963 (9<sup>th</sup> Cir. 2011). The Ninth  
5 Circuit noted that the child pornography guidelines “were not developed in a manner  
6 ‘exemplify[ing] the [Sentencing] commission’s exercise of its characteristic institutional  
7 role.’” *Henderson* at 960, citing *Kimbrough v. United States*, 552 U.S. 85, 109 (2007).  
8  
9 Instead, the child pornography guidelines were implemented because of mandatory  
10 legislation and “specific congressional directives to the Commission to amend the  
11 Guidelines.” *Henderson* at 963. As the Ninth Circuit noted, the child pornography  
12 guidelines have been amended 9 times during their 23 years of existence. *Id.*  
13  
14

15           Because the child pornography guidelines often result in harsh sentences, the  
16 Sentencing Commission has expressed concerns regarding the child pornography  
17 guidelines and wants Congress to give them authority to change the guidelines. *See*,  
18 *e.g.*, U.S.S.C., *Federal Child Pornography Offenses*, at 320-26 (Dec. 2012); *United States v.*  
19 *Jenkins*, 854 F.3d 181, 190 (2d Cir. 2017) (noting that Sentencing Commission has  
20 “effectively disavowed” the child pornography Guideline, which “can easily generate  
21 unreasonable results”); *United States v. Mallatt*, 2013 WL 6196946 at \*8-12 (D. Neb.  
22 Nov. 27, 2013) (concluding that the Guidelines “are not a reliable indicator of the  
23 Sentencing Commission’s view of what a fair sentence should be in nonproduction  
24  
25



1 child pornography cases . . . made obvious by the Commission’s December 2012  
2 report, criticizing § 2G2.2 and recommending major revisions to the Guidelines”);  
3 *United States v. Donaghy*, 2010 WL 2605375 at \*2 (E.D. Wisc. June 24, 2010) (citing  
4 cases describing how Sentencing Commission “actively opposed” certain Guideline  
5 enhancements). As a result, judges have especially wide discretion to disagree with the  
6 excessive sentences such guidelines produce. *See, e.g., United States v. Beiermann*, 599 F.  
7 Supp. 2d 1087, 1104 (N.D. Iowa 2009) (concluding that “§ 2G2.2 should be rejected  
8 on categorical, policy grounds, even in a ‘mine-run’ case, and not simply based on an  
9 individualized determination that it yields an excessive sentence in a particular case.”);  
10 *see also Spears v. United States*, 551 U.S. 261 (2009).

11  
12  
13  
14 Courts from across the country recognize that “[l]ong terms of imprisonment  
15 for non-acting-out offenders have been strongly attacked as unsound and as  
16 fundamentally deviating from the Guidelines overarching policy and expertise.”  
17 *Mallet* at 12; (citing cases). As a result, sentences imposed by courts have been  
18 significantly lower than the guideline range. *Id.*

19  
20 While Mr. Root’s offense is serious, the child pornography guidelines are clearly  
21 excessive based on the history of these guidelines and the disagreement with these  
22 guidelines by many courts across the country. Mr. Root is not asking the Court to  
23 ignore the guidelines, but he argues that a sentence within the guideline range is  
24 greater than necessary to meet the goals of sentencing. Instead, a sentence of 84  
25

1 months imprisonment and 10 years of supervision is sufficient to deter Mr. Root from  
2 future criminal conduct, protect the public, and promote respect for the law and just  
3 punishment.

#### 4 **4. Restitution and Special Assessments.**

5 After the Court determines the full amount of the victims' losses, Mr. Root  
6 requests the Court impose the minimum restitution allowed. Based on the number of  
7 images Mr. Root possessed, it appears his role regarding the victim's losses is minimal.  
8 [ECF No. 61 at ¶¶20-28].

9 Mr. Root requests the Court impose a minimal assessment under the Amy,  
10 Vicky, And Andy Child Pornography Victim Assessment Act, so any monetary  
11 obligations he's required to pay will be applied to restitution. Mr. Root also requests  
12 the Court find he is indigent and not impose the \$5,000 assessment under the Justice  
13 for Victims of Trafficking Act.

#### 14 **Conclusion.**

15 Mr. Root respectfully requests the Court impose a sentence of 84 months  
16 imprisonment and 10 years of supervised release. Mr. Root also requests the Court  
17 recommend he be placed at FCI Englewood in Littleton, Colorado, where sex  
18 offender treatment is available.

1 Dated: October 24, 2023.

2 Respectfully Submitted,

3 s/Alex B. Hernandez, III

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CERTIFICATE OF SERVICE

I certify that on October 24, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to: Ann Wick, Assistant United States Attorney, and Carrie A. Valencia, United States Probation Officer.

s/Alex B. Hernandez, III  
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Attorney for Robert Ray Root